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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,369	11/23/2001	Gerd Munnekehoff	44815-262289 (26010)	9397

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EXAMINER

BRAHAN, THOMAS J

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/913,369

Applicant(s)
MUNNEKEHOFF

Examiner
Thomas J. Brahan

Art Unit
3652



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 21, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-19, and 22-26 is/are pending in the application.
- 4a) Of the above, claim(s) 3, 5, 7, 11, 13-19, and 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 8-10, 12, and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. Applicant's substitute specification filed January 24, 2003 has been entered.
2. Claims 11, 13-17, and 22-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, species, or sub-species, as listed by the applicant in the election. Election was made without traverse in Paper No. 9. Additionally, claim 3 is withdrawn from further consideration by the examiner, as it is drawn to the fluidically acting drive device of Species II, not the electric motor drive of the elected species (Species I). Claim 5 is withdrawn from further consideration by the examiner, as it is drawn to a load bearing element in the form of a parallelogram, and the elected species (Species I) has a cable as the load bearing element, see page 5 lines 17-19. Claim 7 is withdrawn from consideration as depending from claim 5. Claims 18 and 19 are withdrawn from consideration as depending from claim 17, which was listed by applicant as being drawn to a nonelected inventions, species, or sub-species.

3. The following is a quotation of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the claimed subject matter. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

An element in a claim for combination may be expressed as a means or step for performing a specified function without the recital of structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

4. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate description of the claimed invention. It is unclear as to how the applicant is considering the device as generating a "path-dependent" control signal. The specification, as best understood, does not have a characteristic of a path as factor for determining the control signals.

5. Claims 1, 2, 6, 8-10, 12, and 26 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

6. Claims 1, 2, 6, 8-10, 12, and 26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 1, it is unclear as to what would be considered as a path dependent signal. This term is vague, and is not defined sufficiently in the specification as to be solely relied upon for patentability.
- b. It is unclear as to how claim 8 can depend from claim 6 which is specific to a load element wound up on a drum, as claim 8 recites that the signal generator is at the pivot axis of a load bearing parallelogram.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. Claims 1, 2, 6, 9, 10, 12, and 26, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Kahlman et al. The force imparted to the handle moves the load, and establishes a path, as to have the control signals considered as "path-dependent", as the term is best understood.

9. Claims 1, 9, 10, and 12, as best understood, are rejected under 35 U.S.C. § 102(e) as being anticipated by Konosu et al. Konosu et al shows a work assist balanced lifter that includes information regarding the position of the load, see lines 9-11 of the Abstract, to establish the lifting forces, as to have the control signals considered as "path-dependent", as the term is best understood.

10. Claims 1, 2, 6, 8, 10, 12, and 26, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Motoda. Motoda shows a balanced lifting device which uses path-dependant signals from sensor 34, as the term path dependent signal is best understood, as well as force signals to control a motor (13) having a coaxial encoder (17).

11. Applicant's remarks in the amendment filed January 21, 2003 regarding the rejections under 35 U.S.C. § 112, first and second paragraphs, have been fully considered, but are not deemed persuasive. It is unclear as to the applicant's device varies the motor controls based upon a signal which is dependent upon the path of the load movements. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. An inquiry concerning this action should be directed to Examiner Thomas J. Brahan at telephone number (703) 308-2568 on Mondays through Fridays from 9:30-7:00 EST. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (703) 308-3248. The fax number for Technology Center 3600 is (703) 305-7687.

 4/6/03
THOMAS J. BRAHAN
PRIMARY EXAMINER